not actually used can be the basis of a mechanic's lien under the statutes. See BOISOT, MECHANICS' LIENS, § 119; note to *Central Lumber Co.* v. *Braddock Land and Granite Co.*, 13 Ann. Cas. 11. The justice of mechanics' lien laws consists in charging the realty whose value has been enhanced by the addition of labor or materials as security for the price thereof. See *Taggard* v. *Buckmore*, 42 Me. 77, 81; BOISOT, MECHANICS' LIENS, § 7. Therefore, even a liberal construction of the statute should not include materials which are never used. Actual use should be required, though not necessarily physical incorporation into the structure. See 25 HARV. L. REV. 92.

MORTGAGES — PRIORITIES — EFFECT OF LIS PENDENS ON MORTGAGE FOR FUTURE ADVANCES. — The plaintiff gave A. notes to collect and invest the proceeds in land in the plaintiff's name. A. took title in his own name and executed a mortgage to secure future advances to the defendants, who had no knowledge of the plaintiff's right. The plaintiff sued A. for an accounting and asserted a lien on the land, and during the suit money was advanced by the defendants, still without knowledge either of the plaintiff's right or of the suit. *Held*, that the defendants' mortgage for all the sums advanced is entitled to priority over the plaintiff's lien. *Straeffer* v. *Rodman*, 141 S. W. 742 (Ky.).

Where a person has acquired a right in specific property, the doctrine of *lis pendens* will not invalidate any act he may do after bringing of suit in pursuance of such right or for the purpose of carrying it into effect. Thus, where an agreement to sell is made before suit, a conveyance afterward is not invalidated. *Parks* v. *Smoot's Admrs.*, 105 Ky. 63, 48 S. W. 146. So also a mortgagee may buy at his own sale pending a suit to establish a mechanic's lien. *Andrews* v. *National Foundry & Pipe Works*, 77 Fed. 774. By the weight of authority a mortgage for future advances vests a right in the mortgagee for all advances which may be made, if they are optional, unless there is actual notice of intervening encumbrances. *Ward* v. *Cooke*, 17 N. J. Eq. 93. And, if the advances are obligatory, actual notice will not invalidate them. *Crane* v. *Deming*, 7 Conn. 387. The principal case is therefore sound. As the doctrine of *lis pendens* does not apply, the mortgagees are *bonâ fide* purchasers without notice of the plaintiff's right.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — DAMAGE CAUSED BY BURSTING OF SEWER OF INADEQUATE SIZE. — A city constructed a sewer, the capacity of which was insufficient to provide for the sewage and surface water reasonably to be expected. A rainstorm caused the sewer to burst, whereby goods in the cellar of the plaintiff's warehouse were damaged. *Held*, that if the rainstorm was extraordinary, the city is not liable. *Geuder, Paeschke & Frey Co.* v. *City of Milwaukee*, 133 N. W. 835 (Wis.).

A city is not answerable for damage caused by insufficiency of the plan of sewerage to drain the plaintiff's premises. *Mills* v. *City of Brooklyn*, 32 N. Y. 489; *Robinson* v. *City of Everett*, 191 Mass. 587, 77 N. E. 1151. It follows that the language of the principal case is too broad in intimating that a city must use due care to provide means to carry away surface water ordinarily to be expected. A city is liable, however, when the execution of the plan of sewerage results in a "taking" of private property. Collecting water in an artificial channel with an inadequate outlet, which, it can be foreseen, will flood the plaintiff's lands, is a "taking" of his property. *Ashley* v. *Port Huron*, 35 Mich. 296; *Seifert* v. *City of Brooklyn*, 101 N. Y. 136, 4 N. E. 321. See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 65. The outlet must be large enough to provide for all water reasonably to be expected, and hence the city should be liable whether the storm is ordinary or extraordinary, if it is not unprecedented. *Cf. Philadelphia, etc. R. Co.* v. *Davis*, 68 Md. 281, 11 Atl. 822; *Gulf*,

etc. Ry. Co. v. *Pomeroy*, 67 Tex. 498, 3 S. W. 722. The decision of the principal case is supported by much authority, but the better view would seem to be that indicated above.

PARENT AND CHILD — PERSONS ENTITLED TO CUSTODY OF CHILD. — The paternal grandparents in comfortable circumstances sought to obtain custody of a child from the mother, who had been deserted by her husband and was earning a scant livelihood. *Held*, that they may have it. *Brown* v. *Brown*, 56 So. 589 (Ala., App. Ct.).

A white widow with two white children married a mulatto. A Children's Home Society asked for custody of the children. *Held*, that it may not have it. *Moon* v. *Children's Home Society of Virginia*, 72 S. E. 707 (Va.).

In a conflict between the parents as to the right of custody of the child, the early English rule that the father was entitled to it has gradually given way in this country to the sounder principle that the welfare of the child is the most important consideration. *King* v. *Greenhill*, 4 A. & E. 624; *Turner* v. *Turner*, 93 Miss. 167, 46 So. 413. See SCHOULER, DOMESTIC RELATIONS, 5 ed., § 248. However, when the dispute is between a parent and an outsider, that should not be the sole test, for just claims of the parent must also be considered; the child has duties as well as rights. Accordingly, by the weight of authority, if the parent is able to give the child proper care and is not positively unsuitable for the trust, he will be given custody of the child, even though another can offer it greater material advantages. *Moore* v. *Christian*, 56 Miss. 408; *Stapleton* v. *Poynter*, 111 Ky. 264, 62 S. W. 730. *Contra*, *Wood* v. *Wood*, 77 N. J. Eq. 593, 77 Atl. 91. The Alabama decision seems, therefore, to neglect the parent's claim, although the entire question is one of discretion, depending on all the facts of the case. The other decision presents a novel form of disadvantage to the child, namely, loss of social position, but, on the principles stated, appears correct. It incidentally holds that remarriage does not deprive a mother of her right to the child. This seems sound, notwithstanding some technical arguments to the contrary. *Beall* v. *Bibb*, 19 App. D. C. 311. *Contra*, *Worcester* v. *Marchant*, 14 Pick. (Mass.) 510.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — DISCRIMINATION BY ELEVATOR ALLOWANCES TO SHIPPERS. — The Interstate Commerce Act permits allowances to shippers for services rendered in transportation. Certain railways, on their through rates, made an allowance to elevator owners at Missouri River points for the transfer in transit of their own as well as other grain. The Interstate Commerce Commission found that the process of elevation was being utilized for cleaning, clipping, mixing, and grading the grain belonging to the elevator owners, as dealers, and forbade further allowances upon such grain unless the treatment during elevation was discontinued. *Held*, that this order exceeds the powers of the commission. *Interstate Commerce Commission* v. *Diffenbaugh*, 32 Sup. Ct. 22. See NOTES, p. 456.

RECEIVERS — PRIORITY OF RECEIVERS' CERTIFICATES. — The receiver of a steamship company issued certificates and with the proceeds of their sale paid the coupons of the bonds secured by a first mortgage. The funds left in his hands at the final accounting were not sufficient to pay in full both the certificate-holders and the bondholders. *Held*, that the certificate-holders have a prior claim upon the fund. *American Trust Co.* v. *Metropolitan Steamship Co.*, 190 Fed. 113 (C. C. A., First Circ.). See NOTES, p. 458.

REFORMATION OF INSTRUMENTS — MORTGAGE AFTER FORECLOSURE. — By a mutual mistake, a mortgage described the wrong land. The mortgagee foreclosed and bought in the land, acting under the original mistake. *Held*,